

## REMARKS

This application has been thoroughly reviewed in light of the first Office Action and the cited prior art.

The Examiner has rejected all of the original claims as failing to point out and distinctly claim the subject matter which applicants regard as the invention, under 35 U.S.C. 112.

It is noted that claims 6-8, 16 and 17 would be allowable if revised to avoid the Section 112 rejection.

Additionally, the Examiner has rejected claims 1-5, 9-1 and 18-22 as anticipated under 35 U.S.C. 102 by the patent to Pilesi et al. 6,572,027.

Applicant, through counsel, respectfully traverses this rejection in view of the present amendments and requests reconsideration thereof.

The specification has been amended in part in order to conform with United States terminology in the railroad track field. The term, "points" is a literal translation from the original German specification, however, the proper U.S. terminology for this element is "switch".

Applicant has made a sincere effort to redraft the claims that have been rejected under 35 U.S.C. 112 in order to avoid the language that was objected to by the Examiner in the recent Office Action.

Two new dependant claims have been included and a fee charge authorization as required is attached hereto.

With regard to the prior art rejection under Section 102, Applicants respectfully disagree with the Examiner's contentions.

Pilesi et al show a concrete railroad sleeper with a two piece insulator spacer and fastening arrangement. The present applicant have devised a rail fastening to secure a rail having a foot resting on the concrete sleeper or tie, or alternatively, upon a plate element. At least one elastic clip is provided having several legs, one of which extends inside of a receptacle of a holder that is connected to the sleeper. A further leg rests on the foot of the rail and the holder is detachably arranged in the sleeper or in the plate element. It is connected to the sleeper by a bolt.

Such a fastening is designed such that a clear positioning of the holder is achieved. Additionally, electric insulation is provided between the holder and the sleeper and by insulation between the elastic clip and the rail.

The object of the invention is achieved by providing that the holder is mounted in an insert comprising electrically insulated material and being cast integrally into the concrete sleeper. This insures not only a clear positioning of the holder to be fixed, but also provides a simple electrical insulation. These features are not suggested by Pilesi et al who teaches the arrangement of an insulator spacer to achieve insulation between a holder insert 8,10 and the rail.

The insulator spacers 24 of Pilesi et al consist of two parts, namely, an upper member 28 and a post member 33. These members require assembly and for this purpose, the upper member 28 includes a cavity 31 in which the post member 33 rests. See column 5, lines 50 and 51.

The shoulder is permanently mounted within the concrete sleeper or tie at a position located directly adjacent to the rail side area (column 1, lines 28-30).

The state of the prior art provides no suggestion of arranging the holder into an insert cast in the concrete sleeper. As already noted, the insert provides a clear positioning of the holder relative to the rail to be fastened and also desired insulation without the need for arranging a two-piece insulator spacer when mounting the rail.

In order for a prior art reference to anticipate under 35 USC Sec. 102, it must disclose all elements of the claim within the four corners of the single document and must disclose those elements arranged as in the claim. *NetMoneyIN Inc. v. VeriSign Inc.* 88USPQ2d 1751(Fed,. Cir. 2008). This test is not met in this case.

Consequently, the art is not appropriate to suggest or anticipate the teaching of the amended parent claims or the claims dependent therefrom.

In view of the amendments and the remarks noted, *supra*, reconsideration of the rejection of the claims is respectfully solicited with a view to allowance of the application.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Donald L. Dennison".

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